IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

COMPANY APPEAL NO. 6 OF 2007

New Akot Cotton Ginning & Pressing Co. Ltd. vs. Shardul A. Digambar & Ors

COMPANY APPEAL NO. 12 OF 2007

Jayant Joat vs. New Akot Cotton Ginning & Pressing Co. Ltd.

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders.	Court's or Judge's orders

CORAM : B.P. DHARMADHIKARI, J.
DECEMBER 10/13, 2007.

In Company Appeal No.6/2007, the challenge is to the order dated 29.3.2007, passed by Member, Company Law Board, Western Region Bench at Mumbai in Company Petition No.80/297-398-CLB-WR-2006.

By this order, the Company Law Board has partly allowed the petition and restored respondent No.1 before it as a Chairman and Managing Director of the Company. The Petitioner No.2 before it along with one Mr. Mukund Digambar and Mr. Dipak Jodh have been restored as Directors of the Company and Mr. Madhukar Sapkal - respondent No.8 in that appeal, then officiating as Chairman and Managing Director

has been removed. The directions were given to take steps in accordance with law.

While issuing notice before admission on 18.04.2007, it was directed by this Court to maintain status quo. The said interim order continues to operate even today.

Company Appeal No.12/2007 has been filed by Shri Jodh and others and their request is principally to hold 102nd Annual General Body Meeting immediately.

I have heard Advocate Shri Khapre for the appellant in Company Appeal No. 6/2007, Advocate Shri Jaiswal for appellant in Company Appeal No.12/2007 and Advocates Shri S.V. Sirpurkar, Nitin Vyawahare, N.M. Ingle, Anand Parchure in Company Appeal No. 6/2007 for respondents, and Advocate Shri Sirpurkar, Advocate Shri Mohta, Advocate Shri Khapre, Advocate Shri Ingle and Advocate Mrs. Wandile for respondents in Company Appeal No.12/2007.

On 23.11.2007, Company Appeal No. 12 of 2007 was heard for sometime and then parties had sought time to file draft agenda for said AGM. Accordingly, today few such

draft agendas are placed on record.

The strength of Board of Directors is agreed to be 8 and Shri Anant Narayan Kulkarni and Shri Santosh Haribhau Sapkal are yet to complete their tenure. It is agreed that in normal course, their tenure should have expired in 103rd Annual General Meeting but in changed circumstances, their normal tenure will be up to one year from the date of 102nd Annual General Meeting. Thus, the parties agreed that there are six vacancies and holding of 102nd Annual General Meeting immediately is necessary for filling up these six vacancies. It appears that holding of Annual General Body Meeting for filling up the vacancies and for that purpose holding of elections is of utmost importance and there seems to be some dispute amongst the parties about working and affairs of company in the past.

Advocate Shri Jaiswal and Advocate Shri Anand Parchure are pointing out that in statutory Annual General Meeting, auditor is required to be appointed and report of working of Company of previous year also needs to be called. But considering the rival

arguments in this respect, I find that it would be in the fitness of things if both these jobs are left to newly elected body, which will be representative of all and, therefore, can more efficiently and conveniently look into the matter.

In the circumstances, the only business to be transacted in Annual General Meeting, to be held as per the convenience of independent Chairman to be appointed by this Court shall be filling of existing 6 vacancies to the posts of Board of Directors and of electing a Chairman and Managing Director to head the said Board of Directors. With the request of the parties, Advocate Shri S.K. Mishra is appointed to function as Chairman of this meeting in which the business of election only is to be transacted. He shall supervise the conduct of elections in accordance with law and his remuneration for this exercise is fixed at Rs.25,000/- (Rupees Twenty Five Thousand Only). The said remuneration shall be paid to him by the newly elected Board after the result of elections is declared. Advocate Shri Mishra, is authorised to conduct elections as per

Section 257 of Companies Act. All parties jointly request that said elections should be held by Secret Ballot. In the interest of Company and shareholders, Shri Mishra is directed to hold elections by Secret Ballot by publishing appropriate election programme in advance so as to settle the list of contesting candidates at least seven days before the scheduled date of Annual General Meeting/ Elections so as to enable him to get necessary ballot papers printed. The costs of entire election process shall be incurred by the Company.

Shri Mishra is also authorised to take assistance from Company Secretary and Company Auditor for the purposes of chalking out election programme or for holding of election, if he feels necessary. He may also obtain police protection at the time of elections, if he finds that such protection is required.

After counting is over, Shri Mishra shall immediately declare the result of six successful candidates and Shri Mishra shall thereafter convene a meeting of six newly elected Directors and two continuing

Directors, and the 8 Directors in that meeting shall elect Chairman-cum-Managing Director of the Board. The Board constituted after such election shall thereafter meet as early as possible to take care of other urgent business of the Company. The continuing two Directors viz. Shri Anant Narayan Kulkarni and Shri Santosh Haribhau Sapkal shall retire in Annual General Meeting held after one year unless their tenure is cut short by any other legal procedure. In their first meeting, the Board of Directors shall elect two Directors, who shall complete their tenures in meeting to be held after a gap of one year thereafter.

Advocate Shri S.K. Mishra to fix the date of meeting and start process within a period of two weeks from today. The meeting should be held within a period of six weeks from today. The present body in charge shall hand over necessary records and papers to Shri Mishra so as to enable him to undertake the process of election within a period of two weeks from today.

Advocate Shri Ingle has placed before the Court consent letters of Shri M.M.

Sapkal, Amol Rameshwar Borkar, Mukund Shridharpant Joshi, Vikrant Shaligram Lahariya along with Vakalatnama in his favour duly executed by Sachin Baban Joshi and Vikram Lahariya. He undertakes to pay deficit Court fee on this Vakalatnama by tomorrow. The Vakalatnama and consent letters are taken on record. By this consent letters all these five persons accepted that Shri Anant Narayan Kulkarni and Shri Santosh Haribhau Sapkal will continue as Directors of the Board as mentioned above and they have no objection if their tenure as Director is brought to an end so as to facilitate holding of elections.

In view of this arrangement, the challenge in both the appeals is rendered infructuous. Both the appeals are accordingly disposed of. However, there shall be no order as to costs.

JUDGE

*GS.